

his designee or the hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(b) The Associate Administrator may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the FAA, consider a violation of this subpart sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

## **PART 17—PROCEDURES FOR PROTESTS AND CONTRACTS DISPUTES**

### **Subpart A—General**

Sec.

- 17.1 Applicability.
- 17.3 Definitions.
- 17.5 Delegation of authority.
- 17.7 Filing and computation of time.
- 17.9 Protective orders.

### **Subpart B—Protests**

- 17.11 Matters not subject to protest.
- 17.13 Dispute resolution process for protests.
- 17.15 Filing a protest.
- 17.17 Initial protest procedures.
- 17.19 Dismissal or summary decision of protest.
- 17.21 Protest remedies.

### **Subpart C—Contract Disputes**

- 17.23 Dispute resolution process for contract disputes.
- 17.25 Filing a contract dispute.
- 17.27 Submission of joint or separate statements.
- 17.29 Dismissal or summary decision of contract disputes.

### **Subpart D—Alternative Dispute Resolution**

- 17.31 Use of alternative dispute resolution.
- 17.33 Election of alternative dispute resolution process.
- 17.35 Selection of neutrals for the alternative dispute resolution process.

### **Subpart E—Default Adjudicative Process**

- 17.37 Default adjudicative process for protests.
- 17.39 Default adjudicative process for contract disputes.

### **Subpart F—Finality and Review**

- 17.41 Final orders.
- 17.43 Judicial review.
- 17.45 Conforming amendments.

### **APPENDIX A TO PART 17—ALTERNATIVE DISPUTE RESOLUTION (ADR)**

**AUTHORITY:** 5 U.S.C. 570–581, 49 U.S.C. 106(f)(2), 40110, 40111, 40112, 46102, 46014, 46105, 46109, and 46110.

**SOURCE:** Docket No. FAA–1998–4379, 64 FR 32936, June 18, 1999, unless otherwise noted.]

### **Subpart A—General**

#### **§ 17.1 Applicability.**

This part applies to all protests or contract disputes against the FAA that are brought on or after June 28, 1999, with the exception of those contract disputes arising under or related to FAA contracts entered into prior to April 1, 1996.

#### **§ 17.3 Definitions.**

(a) *Accrual* mean to come into existence as a legally enforceable claim.

(b) *Accrual of a contract claim* means that all events relating to a claim have occurred which fix liability of either the government or the contractor and permit assertion of the claim, regardless of when the claimant actually discovered those events. For liability to be fixed, some injury must have occurred. Monetary damages need not have been incurred, but if the claim is for money, such damages must be capable of reasonable estimation. The accrual of a claim or the running of the limitations period may be tolled on such equitable grounds as where the office of Dispute Resolution for Acquisition determines that there has been active concealment or fraud or where it finds that the facts were inherently unknowable.

(c) *Acquisition Management System (AMS)* establishes the policies, guiding principles, and internal procedures for the FAA's acquisition system.

(d) *Administrator* means the Administrator of the Federal Aviation Administration.

(e) *Alternative Dispute Resolution* (ADR) is the primary means of dispute resolution that would be employed by the FAA's Office of Dispute Resolution for Acquisition. See Appendix A of this part.

(f) *Compensated Neutral* refers to an impartial third party chosen by the parties to act as a facilitator, mediator, or arbitrator functioning to resolve the protest or contract dispute under the auspices of the Office of Dispute Resolution for Acquisition. The parties pay equally for the services of a Compensated Neutral, unless otherwise agreed to by the parties. A Dispute Resolution Officer (DRO) or Neutral cannot be a Compensated Neutral.

(g) *Contract dispute*, as used in this part, means a written request to the Office of Dispute Resolution for Acquisition seeking resolution, under an existing FAA contract subject to the AMS, of a claim for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or for other relief arising under, relating to or involving an alleged breach of that contract. A contract dispute does not require, as a prerequisite, the issuance of a Contracting Officer final decision. Contract disputes for purposes of ADR only may also involve contracts not subject to the AMS.

(h) *Default Adjudicative Process* is an adjudicative process used to resolve protests or contract disputes where the parties cannot achieve resolution through informal communication or the use of ADR. The Default Adjudicative Process is conducted by a DRO or Special Master selected by the Office of Dispute Resolution for Acquisition to serve as "adjudicative officers," as that term is used in part 14 of this chapter.

(i) *Discovery* is the procedure where opposing parties in a protest or contract dispute may, either voluntarily or to the extent directed by the Office of Dispute Resolution for Acquisition, obtain testimony from, or documents and information held by, other parties or non-parties.

(j) *Dispute Resolution Officer* (DRO) is a licensed attorney reporting to the Of-

fice of Dispute Resolution for Acquisition. The term DRO can include the Director of the Office of Dispute Resolution for Acquisition, Office of Dispute Resolution for Acquisition staff attorneys or other FAA attorneys assigned to the Office of Dispute Resolution for Acquisition.

(k) *An interested party*, in the context of a bid protest, is one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract. Proposed subcontractors are not "interested parties" within this definition and are not eligible to submit protests to the Office of Dispute Resolution for Acquisition.

(l) An *intervenor* is an interested party other than the protester whose participation in a protest is allowed by the Office of Dispute Resolution for Acquisition. For a post-award protest, the awardee of the contract that is the subject of the protest shall be allowed, upon request, to participate as an intervenor in the protest. In such a protest, no other interested parties shall be allowed to participate as intervenors.

(m) *Neutral* refers to an impartial third party in the ADR process chosen by the Office of Dispute Resolution for Acquisition to act as a facilitator, mediator, arbitrator, or otherwise to resolve a protest or contract dispute. A Neutral can be a DRO or a person not an employee of the FAA who serves on behalf of the Office of Dispute Resolution for Acquisition.

(n) The *Office of Dispute Resolution for Acquisition* (ODRA), under the direction of the Director, acts on behalf of the Administrator to manage the FAA Dispute Resolution Process, and to recommend action to be the Administrator on matters concerning protests or contract disputes.

(o) *Parties* include the protester(s) or (in the case of a contract dispute) the contractor, the FAA, and any intervenor(s).

(p) *Product Team*, as used in these rules, refers to the FAA organization(s) responsible for the procurement activity, without regard to funding source, and includes the Contracting Officer (CO) and assigned FAA legal counsel,

when the FAA organization(s) represent(s) the FAA as a party to a protest or contract dispute before the Office of Dispute Resolution for Acquisition. The CO is responsible for all Product Team communications with and submissions to the Office of Dispute Resolution for Acquisition through assigned FAA counsel.

(q) *Screening Information Request* (SIR) means a request by the FAA for documentation, information, presentations, proposals, or binding offers concerning an approach to meeting potential acquisition requirements established by the FAA. The purpose of a SIR is for the FAA to obtain information needed for it to proceed with a source selection decision and contract award.

(r) A *Special Master* is an attorney, usually with extensive adjudicative experience, who has been assigned by the Office of Dispute Resolution for Acquisition to act as its finder of fact, and to make findings and recommendations based upon AMS policy and applicable law and authorities in the Default Adjudicative Process.

**§ 17.5 Delegation of authority.**

(a) The authority of the Administrator to conduct dispute resolution proceedings concerning acquisition matters, is delegated to the Director of the Office of Dispute Resolution for Acquisition.

(b) The Director of the Office of Dispute Resolution for Acquisition may redelegate to Special Masters and DROs such delegated authority in paragraph (a) of this section as is deemed necessary by the Director for efficient resolution of an assigned protest or contract dispute, including the imposition of sanctions or other disciplinary actions.

**§ 17.7 Filing and computation of time.**

(a) Filing of a protest or contract dispute may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A protest or contract dispute is considered to be filed on the date it is received by the Office of Dispute Resolution for Acquisition during normal business hours. The Office of Dispute Resolution for Acquisition's normal business hours are from 8:30

a.m. to 5 p.m. est or edt, whichever is in use. A protest or contract dispute received via mail, after the time period prescribed for filing, shall not be considered timely filed even though it may be postmarked within the time period prescribed for filing.

(b) Submissions to the Office of Dispute Resolution for Acquisition after the initial filing of a contract dispute may be accomplished by any means available in paragraph (a) of this section. Submissions to the Office of Dispute Resolution for Acquisition after the initial filing of a protest may only be accomplished by overnight delivery, hand delivery or facsimile.

(c) The time limits stated in this part are calculated in business days, which exclude weekends and Federal holidays. In computing time, the day of the event beginning a period of time shall not be included. If the last day of a period falls on a weekend or a Federal holiday, the first business day following the weekend or holiday shall be considered the last day of the period.

**§ 17.9 Protective orders.**

(a) The Office of Dispute Resolution for Acquisition may issue protective orders addressing the treatment of protected information, either at the request of a party or upon its own initiative. Such information may include proprietary, confidential, or source-selection-sensitive material, or other information the release of which could result in a competitive advantage to one or more firms.

(b) The terms of the Office of Dispute Resolution for Acquisition's standard protective order may be altered to suit particular circumstances, by negotiation of the parties, subject to the approval of the Office of Dispute Resolution for Acquisition. The protective order establishes procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information.

(c) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for access to the material under the order by submitting an application to the Office of Dispute